

Report and Recommendations
of
The Governor's Commission on Corrections Overcrowding

Submitted by The Commission

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The Charge

Whereas, the rate of incarceration of individuals convicted of crimes in Vermont has more than doubled in the past ten years; and

Whereas, the cost of housing and supervising incarcerated individuals has more than quadrupled in that same time period; and

Whereas, the rate of growth in available corrections bed space has not kept pace with the growth of Vermont's corrections population and the State of Vermont has been forced to transfer Vermont inmates to facilities outside the State of Vermont; and

Whereas, the number of individuals released to the community under the supervision of the Vermont Department of Corrections has also doubled in the past ten years; and

Whereas, the caseload of offenders convicted of more serious offenses who are supervised in the community has nearly tripled and the probation caseload has grown by 33% in the last eight years; and

Whereas, the number of individuals detained pending resolution of criminal charges has doubled in the past four years and these pre-trial detainees fill 24% of our in-state beds; and

Whereas, the above trends, if continued, present the likely need to either increase Vermont's reliance on out of state prison beds or to build more prisons in Vermont; and

Whereas, the above trends, if continued, will result in an unsustainable spending curve for the provision of adequate space and supervision and compromises the State's ability to provide humane and enlightened services and safe and secure correctional facilities and communities.

Why The Charge

The basic and fundamental charge of the Commission is to make recommendations to the Governor regarding ways of reducing overcrowding in correctional institutions. This is an important assignment because the crush of overcrowding in Vermont correctional institutions has already:

- compromised the statutory mission of the department
- increased personal danger to staff and inmates alike
- caused unacceptable hardship for offenders and families of offenders who are in out of state institutions
- resulted in excessive and out-of-control cost at the expense of other worthy government sponsored efforts, such as higher education and health care
- disrupted a reasonable and well-designed program of treatment and thoughtful integration of offenders back to their communities upon the completion of their sentences
- resulted in unhealthy and unwholesome practices in the institutions
- hurt the morale of staff
- contributed to the deaths of inmates
- resulted in public dissatisfaction, lack of credibility for the Department of Corrections (the “Department” or sometimes “DOC”) and unease, which negatively impacts the entire criminal justice system

Further, there is a range of palliative programs either in or associated with the Department that cannot be applied efficiently or effectively. This results in loss of important opportunities to assist inmates, who inevitably will be among us again in society, to achieve needed personal change. This adds to the already remarkable, and sometimes unnecessary cost of the corrections system, which, as but one example, at this time exceeds Vermont’s support for higher education.

The problem has grown over two decades and has greatly accelerated in the last 4 years. The problem is now to the point where solutions required must be bold in order to have a noticeable impact. Marginal and incremental changes are welcome and will over time help, but they must be anchored by actions that are significant enough so that change is real and substantial

I. Executive Summary

Accumulating and corrosive overcrowding in Vermont's correctional system has taken a serious toll on offenders, the Department of Corrections, Vermont communities, and the state's budget. Bold action must be taken to bring the problem to a manageable level.

The legislature, DOC, and the Administration have some good choices for reducing both overcrowding and the overall cost of Corrections, while in the process avoiding the construction of another major correctional institution. Using a combination of GPS technology for both non-violent detainees and sentenced prisoners, discharging persons who are ready to be released, establishing one work camp per year for each of three years, and employing a variety of other techniques, could result in bringing back all out of state inmates, greatly reducing overcrowding thus making the system work better, providing for inevitable growth over the next decade, and avoiding many millions of dollars of unnecessary General Fund expenditures.

At some point, if a major institution is required, it should not be a general population facility, but should be one designed to provide short term confinement for detainees who are not suitable for release.

Implementing these recommendations will: lower overall correction costs; bring capacity back in line with demand; allow the regional system to be used as it was designed; and greatly soften the serious, demoralizing, and financially crippling effects of overcrowding on staff, offenders, and Vermont communities.

This Commission has proposed what we believe to be imaginative and achievable solutions, which if implemented, would have far reaching benefits not only to the corrections system but to the State's General Fund health. Millions of dollars could be saved by doing business in new ways (see Appendix 1) to help solve other important problems such as drug treatment or health care needs.

Refocusing our efforts throughout the criminal justice system to achieve the statutory purposes as articulated in Title 28, is essential to reforming the system. (see Appendix 1 for summary of beds and costs)

II. Forward

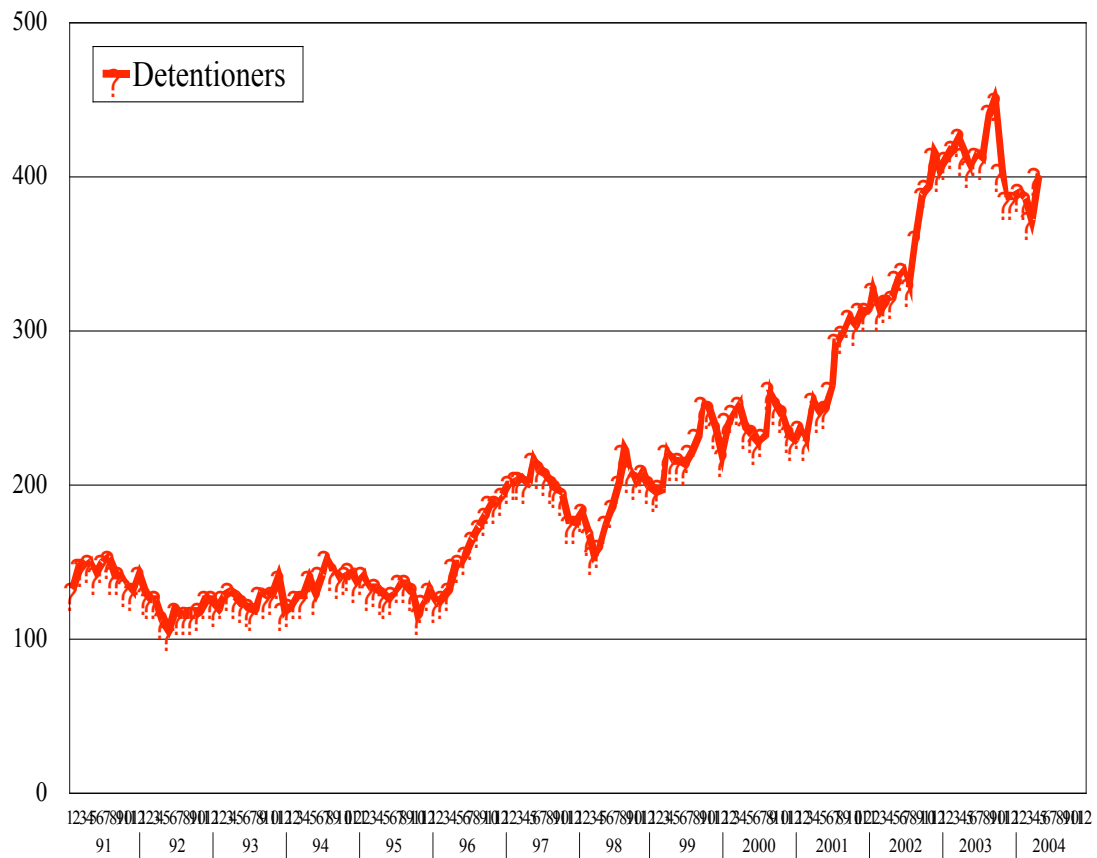
Corrections in Vermont is in serious, if not dire, circumstances. If the current growth of incarceration continues unabated, Vermont will need to build the equivalent of three more Springfield facilities within 6 years at a construction cost of about \$32 million per

prison. This would require a total capital expenditure on the order of \$100 million, not including substantial annual operating costs.

Virtually all of the many serious problems being exhibited, including some inmate deaths, are a function of critical, chronic and the recently exploding increases in the population of its facilities, programs, and capacities.

Three basic indicators paint a system virtually out of control. They are:

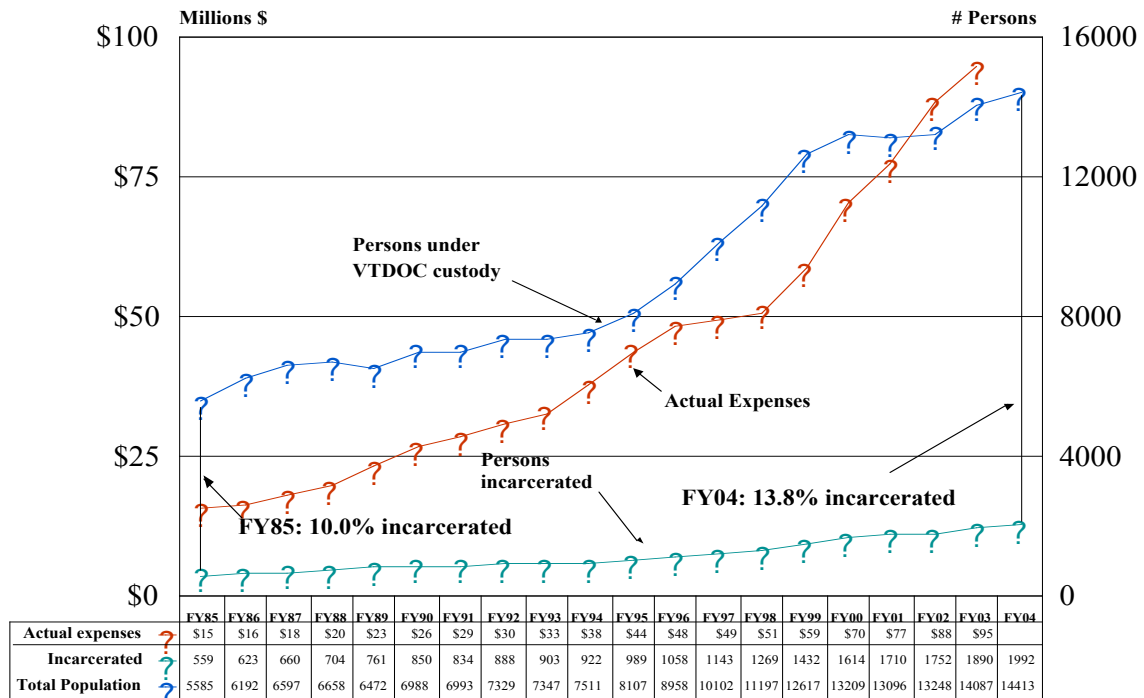
Pre-Trial Detainees



Source: [Vermont Corrections Monthly Population Stats Averages](#)

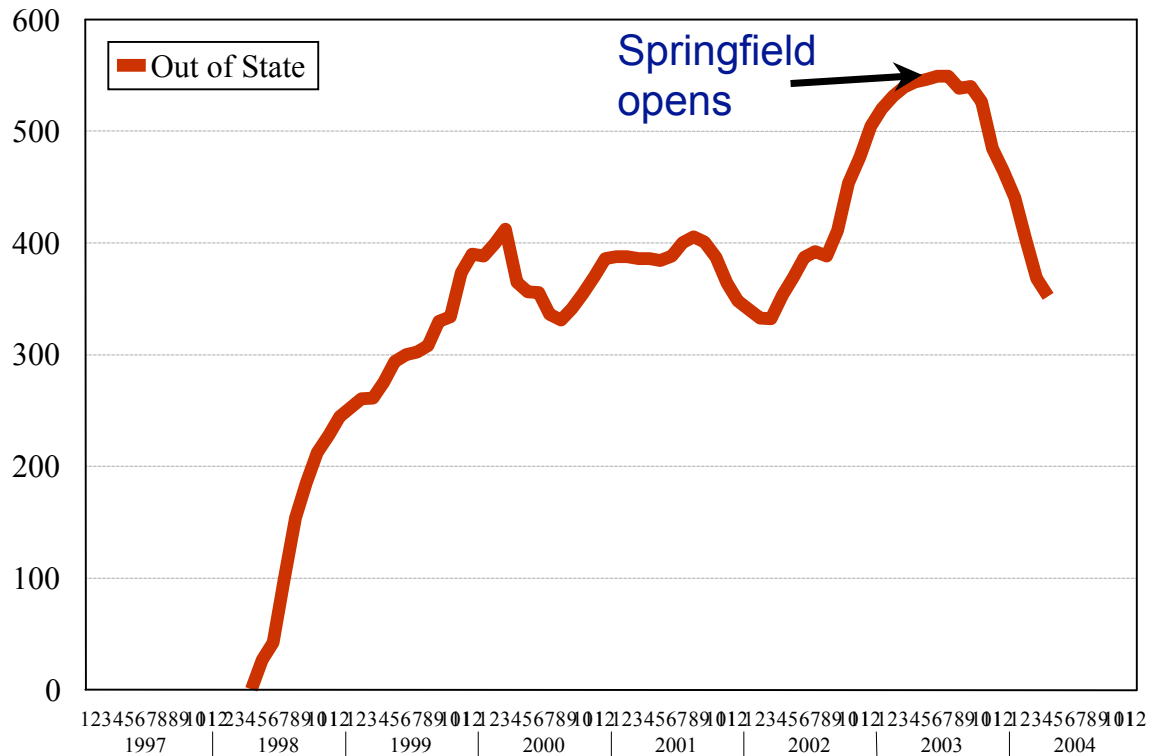
This graph shows that the number of Pre-Trial detainees in Vermont has increased some 300% in the ten (10) year period between 1993 and 2003.

Total Budget vs. Average Daily Population



This graph shows the total department budget, in millions of dollars, from FY1985-FY2004, the total population supervised, and the total population housed in jail. The proportion of the population incarcerated is noted, having increased from 10% of the total to 13.4% of the total. The number incarcerated has increased from 559 to 1,890, an increase of 243 %. The number supervised has also increased dramatically, from 5,585 in FY1985 to 14,087 in FY2003, an increase of 152%, so it is clear that the incarcerated portion of the total population has increased much faster than the total supervised.

Population Housed out of state



This above graph is significant because it shows that even with the opening of the new Springfield facility, Vermont continues to have the equivalent of an entire institution housed out of state.

This report offers recommendations for major change because incremental change cannot catch up with the problem.

Some of the larger necessary changes which we recommend will be difficult to politically embrace because they go against the grain of the 90's severe hardening of public attitude toward offenders, who, simply put, have little or no constituency.

III. Caveats

The members of the Commission are volunteers, who, nevertheless, have a total of 150 years of combined experience connected to the criminal justice system. We met regularly for 6 months, held public hearings across the state, had extensive discussions with key staff of the DOC, visited facilities and heard from inmates, both instate and out of state, and heard from leaders from every sector of the criminal justice system. As a result of

this process, we believe we have obtained a comprehensive view of the problems, and received critical and diverse information regarding possible solutions.

We have attempted to be as precise as the data would permit. We believe that we have captured the essence of the problems of this grossly overburdened correctional system. We also believe that if these recommendations are substantially followed, the result will be an observable reduction in the overcrowding problem that the corrections system is facing, with improved performance following.

IV. The Law and Policy

All of these recommendations are dependent upon returning to the focus and spirit of Title 28 Sec.1:

“(a) The department of corrections...shall have the purpose of developing and administering a correctional program designed to protect persons and property against offenders of the criminal law and to render treatment to offenders with the goal of achieving their successful return and participation as citizens of the state and community, to foster their human dignity and to preserve the human resources of the community.

(b) The department shall formulate its programs and policies recognizing that almost all criminal offenders ultimately return to the community, and that the traditional institutional prisons fail to reform or rehabilitate, operating instead to increase the risk of continued criminal acts following release. The department shall strive to develop and implement a comprehensive program which will provide necessary closed custodial confinement of frequent, dangerous offenders, but which also will establish as its primary objective the disciplined preparation of offenders for their responsible roles in the open community.

(c) In order to implement its programs and policies the department shall develop and maintain correctional facilities which shall include both residence-centered institutions and facilities reflecting nonresidence principles designed to facilitate the reintegration of the offender into the community. These facilities shall utilize the supporting resources of probation and parole services, the increased cooperation of personnel in the fields of welfare, health and education, and the increased participation of the citizens of the state in attempts to achieve correctional purposes and objectives.” (footnote – see Sec 28 VSA sec 2a, regarding Restorative justice).

The law is clear...but we have lost our focus over time.

V. What the People Said

These special stories came from public hearings, letters, and inmate interviews.

These stories represent the human face of the problem. They are the stories of offenders and their families who, in a real way, are also victims of the overcrowding, particularly those related to the inmates who are housed out of state. These statements which are in no particular order, are summarized and edited for reasons of space. The voices were relatively unsophisticated, but were extremely heartfelt, powerful, and often wise.

- **The parent of an offender** – *Overcrowding has virtually eliminated rehabilitation. It is not possible in these settings. We are now releasing offenders into our communities with no or little preparation. And the longer they are there, the less chance you have. Prisoners are being released with nothing.*
- **A prisoner advocate** – *Probation is too quick on the trigger to violate people to go back to incarceration. The punishment doesn't fit the crime. And it's a waste of resources to take someone away from their job, housing, and family for technical violations. There is zero tolerance, and that is wrong.*
- **An Ex-offender** – *There are not enough trained social service and case workers to work with offenders to get them out. They need to be employees of someone else than the Corrections Department.* “Also, if programming could begin while people are out of state, they would not have to wait to begin after they return.
- **A Women's Advocate** – *Political leaders need to change the tone about people who get into trouble. Hard line politicians are making the problem worse.* “Many of the people in prisons are very sick people, mentally ill, substance abuse, psychological, etc., and we are not dealing with their problems.” “The children of prisoners are six times more likely to be offenders at a later time. We are creating more human disasters.” “Use prisons only to keep communities safe from violent people.” “There are women in our jails who could leave if they had some place to go...there is no place to go.
- **A Community Treatment Provider & the sister of an offender** – *We're not evaluating people for their problems early enough in life. We are letting things get out of hand, and then we try to change them.* “The court system completely disregarded sensible recommendations for treatment. All they had was punishment on their mind.” “And they are not getting the treatment they need while in jail.
- **Attorney with Prisoners Rights Office** – *Overcrowding is causing great inconsistencies in basic records. Our office is overwhelmed with trying to get basic things resolved with inmates.*
- **25-year officer veteran, and leader of the Corrections bargaining unit** – *We lost structural ground in the 1980's. We never built a prison. We need a detention facility in Chittenden County. Separate the detention*

population from the sentenced population. We are passing laws right and left that require incarceration. Don't let private correctional facilities fool you. Their track record is not that great. We have cut staff in our facilities while the population is going up. Staff turnover of correctional officers is a real issue. It's a problem. Too many people on probation, which is ultimately driving resource problems. Use community restitution work crews.

- **Friend of a woman prisoner** – *Being a prisoner often is capricious and arbitrary. And those that end up there become paupers along with the rest of their family.” “Most of the prisoners come from Chittenden County. That’s where the capacity should be...not in Windsor.*
- **DOC volunteer** – *We need to reframe the role of prisons. DOC cannot resolve or solve long-term problems in our society. The Department has done a good job with the challenge of women, but we can do the same work without sending them to prison.” “Use restorative justice more. It has great potential. Community members need to play a larger role. Unfortunately, there is too strong a punitive strain at the restorative boards.”*
- **Family that has been involved with the corrections system for 20 years** – *when a family member is sentenced to jail, it affects all family members. There is no rehabilitation in the Vermont Department of Corrections. The system doesn’t respond to our inquiries. There are unnecessary and unexplained delays from point to point in the system. People are promoted in the system who are not qualified for the next step and on-the-job training is unacceptable.” “There is no mention of inmates in the DOC vision and mission statement. That says it all.”*
- **Probation Officer** – *My caseload is 208, which is less than average of 219. High volume and low risk. Have had as high as 240 on my caseload. Only 8% are on parole. Forty-two percent have a reparative condition. I can’t even count how many heroin addicts on my caseload. Reparative should not be a condition of standard probation. It accelerates the downward spiral.*
- **Mother of a daughter at Windsor** – *Her crime was embezzlement and is doing time. Is this the best way to get things back on track? She is losing her home and her children while she spends useless time in jail.” “The sentence was imposed to satisfy the victim.” “Is that the best way?*
- **Ex Dir of ACLU** – *ACLU is concerned about sending offenders out of state. This doesn’t help reintegration. For-profit systems have an incentive to cut costs. But there is something worse. It is a dynamic of not providing services to inmates that have high needs. It always will be more expensive for inmates to stay in Vermont because we provide more services. Electronic monitoring of inmates is a very underutilized option. It’s a better alternative for community reintegration instead of jail.*
- **The Aunt of a woman inmate** – *Her crime was such that there are many alternatives to incarceration, but the sentencing was strictly punitive.*
- **Inmates** – *Prisoners are held in jail longer than they should be because of lack of legal services.*

- **An out of state inmate** – *You have to have programming, a job and a house – I’ve been writing letters to caseworkers to try to get programming- I am talking dozens of letters – it is \$.23 per hour to work in Greensville, and stamps are \$.37. I can’t get out from here.*
- **An inmate** – *With no good time on the minimum there is not enough of a spread between the minimum and the maximum to do programming, and so I’m just being maxed out.*
- **A welfare-to-work administrator** – *Teach them a trade so they can get a job when they get out.*

Other important comments...

- *We have more than enough information and data. In fact, we are swimming in it. The time for gathering data and information is over. It is time for action. Inaction at this point is dangerous to all concerned, including offenders, staff, and Vermont communities.*
- *There is no reintegration process worth talking about. Lack of housing as people get out is the biggest problem to moving people back into the communities.*
- *Get mentally ill people out of the prison system. It is hurting both those that are mentally ill, and the system itself.*
- *The Truth-in-Sentencing Bill eliminated good time, an important incentive for people to get out.*
- *Use some corrections money to make our communities stronger.*
- *Many prisoners want jobs inside, and most can’t get them. It’s dangerous for people simply to watch TV all day.*
- *Families and community groups are systematically cut off from prisoners*
- *Inmates are coming out more bitter and distrustful than when they went in. This is dangerous over the long haul.*
- *Sentence computations are different from institution to institution. You have to hire an attorney to get the basics done.*
- *Over time, the system has turned punitive at every level, from the hard-line politicians that set a tone, to judges and prosecutors who have played into that tone, to the department itself which has taken personal accountability to new levels.*
- *There are people ready to leave, but who haven’t met the re-entry requirements, i.e. Housing, job, other supports.”*

VI. Need to Set Major Targets for Change

One way to think about prison overcrowding is to set a major target, that if achieved over a reasonable period of time, will result in a visible and significant reduction in inmate population and cost.

There are two possible major actions which meet the above criteria.

First, if the correctional population were reduced by the number of inmates associated with the size of the construction of a new institution, there would be significant improvements in all aspects of the corrections system. We place the approximate number of offenders that would be related to a new institution at 400 to 500 inmates.

Secondly, a direct and related action would be to avoid the use of out of state institutions to house Vermont inmates. This number would approximate 450 persons.

In addition the use of out of state facilities has many negative outcomes associated with the practice. Some examples:

- The expenditure of approximately \$8 million of Vermont General Fund dollars outside of Vermont which, if spent in Vermont, would have both a direct and an indirect multiplier economic benefit to the state.
- Over time, the creation of a division of the Department completely dedicated to transporting and servicing the out of state population, with an annual cost of about \$834,000.
- The exposure of Vermont inmates to the cultures of harder and tougher prison environments, which Vermont inmates bring back to Vermont over time, thus influencing the culture of Vermont institutions and communities in a negative manner. (This particular point was strongly driven home by Kerry Sleeper, Commissioner, the Department of Public Safety.)
- A substantial number of offenders in out of state facilities are beyond their minimum.
- The extreme hardship on the families and children of inmates housed away from Vermont.
- The creation of a false sense of fiscal advantage because of the lower cost of out of state beds. This does not adequately take into account the hidden costs, such as the long term cost of not treating mental illness, substance abuse, or educational deficits.
- The almost impossible task imposed on inmates of obtaining housing and employment from a long distance, both of which are necessary for release.
- The many problems associated with lack of regular and consistent contact with the Department of Corrections.

Therefore, lowering the inmate population in Vermont by roughly the number of inmates housed in out of state correctional facilities without compromising the integrity of the criminal justice system would have a desirable and needed impact on the overall

institutional safety, program viability, and credibility of the Vermont Department of Corrections. This would give the Department a better opportunity to discharge its lawful responsibilities adequately.

The net result would be to place inmates in a more appropriate setting thereby ensuring that those who require imprisonment continue to be incarcerated, and those who do not require incarceration will be promptly placed in less costly settings where appropriate supervision and treatment can occur.

VII. Recommendations

The Commission has concluded that the choice is to implement a variety of recommendations set forth below, or to expend the equivalent of almost an entire year's capital budget on constructing another major institution.

Our recommendations follow:

1. Recommendation 1 - Use GPS Technology to Release 400 Prisoners

New developments in GPS technology allow supervision at a cost of about \$3000 per offender per year. This could be applied to both sentenced and detained inmates. Non-violence would be the standard criteria for selection for participation in the electronic surveillance alternative. Four hundred inmates could be released using this technology which would allow bringing back virtually all of the out of staters.

Opening up 400 beds which would allow the return of 400 out of state inmates would result in an overall budget cost of approximately \$2.4 million. When combined with the cost savings of bringing back all Vermont inmates from out of state facilities, a net savings of \$9.4 million would result.

The Department cannot solve these problems by itself. The Executive and Legislative branches need to work to foster more tolerance in our communities for released offender housing and treatment and program options with appropriate supervision. It is the interaction of offenders and communities which can build the relationships needed to make the system work.

2. Recommendation 2 - Substantially Reduce the Number of Detainees

The problem is that the average number of detainees has increased by 300 in the last ten years from 110 in 1993 to 410 in 2003, which is more than triple, with 190 more detainees, or 2/3 of the increase occurring only in the last 2 years.

The most troublesome indicator of this increase in the number of detainees is that over the past year, there were 48 days on which the detention population exceeded the combined capacity in the three regional facilities in Chittenden, St. Johnsbury, and Rutland. In effect, on these days there was no room for sentenced prisoners in these 3 facilities, which were designed primarily to serve as reintegration centers for offenders who have completed their sentences and are on their way back into the open society.

Even more shocking, for example, on July 19, 2004, of the 350 inmates at the brand new Springfield facility, 148 were detainees.

On a given day, there are about 400 pre-trial detainees in facilities. This is twice as many as were being housed on an average day three years ago.

Those detainees then push short-time inmates to higher security facilities in St. Albans, Newport, and Springfield, who then displace more inmates than the number of those housed out of state.

This is an utter disruption of any rational use of bed space and is primarily driven by the recent explosion of persons held in detention status.

Excessive and sometimes seemingly random movement of detainees out of their districts is another impact of the crush of detainees.

A reduction of time served in detention would reduce the number of detainees incrementally. Such an initiative must be shared by the judicial branch, prosecutors, and defenders.

We concede that speedier resolution of the proceedings against the offenders who are held longer than 120 days is unlikely to have any impact on bed occupancy. These offenders are nearly all being detained for serious, violent felonies, and are very likely to be sentenced to additional time beyond that served on detention. The result is that the label changes, but they still occupy a bed. In that most criminal defendants charged with serious felonies who are held as pre-trial detainees for long periods of time are likely to be sentenced for additional incarceration, we do not recommend any changes with respect to this population.

Providing court resources is one way to help, but simply accelerating the flow is not a large enough solution. Very large numbers need to be diverted to make a difference. Limiting detention to violent crimes would be one way but would require significant buy-in especially from law enforcement, and prosecutors. The increasing use (in Chittenden) of police diversion is very promising. According to Bob Simpson, Chittenden County State's Attorney, the program has diverted some 900 cases from prosecution last year. This program should be replicated throughout Vermont.

Analysis shows that a net reduction of 12 beds saved annually could be realized in correctional institutions on weekends by releasing those incarcerated prior to the

following Monday. In most cases these are people who don't need to be there in the first place. (See Appendix)

We need to end protective custody for detoxification and expand Alcohol and Drug Abuse Prevention (ADAP) and mental health services to deal with these issues. The experience in Windham County where the hospital served as a detoxification facility is a good model. A small number of beds (estimated at 9 beds annually) could be saved, but the issue is how to best handle and treat persons who are alcoholics. Here is where the health of other systems is so important. For example, the mental health system today does not have adequate capacity to service emergency mental health needs that intersect with corrections.

We also urge the Department of Mental Health, Department of Health, and ODAP to explore expanding the secure drug detox and mental crisis programs at Rutland Regional Medical Center and Fletcher Allen to statewide implementation.

Regarding the questions of when and why people should be detained, we concluded that the current law, 13VSA. Sec 7554, is clear. The purpose of bail is set forth in subsection 1 as follows:

“(1) The person shall be ordered released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the judicial officer determines that such a release will not reasonably assure the appearance of the person as required. In determining whether the person presents a risk of nonappearance, the judicial officer shall consider, in addition to any other factors, the seriousness of the offense charged and the number of offenses with which the person is charged. If the officer determines that such a release will not reasonably assure the appearance of the person as required, the officer shall, either in lieu of or in addition to the above methods of release, impose the least restrictive of the following conditions or the least restrictive combination of the following conditions which will reasonably assure the appearance of the person as required:...”

Current practice however, is not consistent with the statute. The standards for release from detention need to be reviewed. For example, virtually every defendant is given the same conditions. Very few are released on their own recognizance. Discretion needs to be reintroduced into the system as applied by the judges. An example of the problem is that most felony level DUIs have an alcohol prohibition and a reporting condition to monitor compliance. The condition should be ‘not to operate a motor vehicle’. This is a more appropriate condition which the defendant has the ability to meet. The odds of an alcoholic meeting a non-drinking condition without treatment, are slim.

Both bail and conditions of release are designed to ensure appearance. New GPS technology is capable of keeping track of detainees. A proportion of detainees could be tracked using this technology at much less cost. Tracking 10 detainees, for example, would save approximately \$250,000 over one year, which goes a long way to making a technology investment worthwhile.

The Courts should enforce the existing rule, (Administrative Order #5), which requires misdemeanor cases to be disposed of within 60 days. This may require dismissal of cases, without prejudice, where there is not sufficient reason to extend the time for disposal by other means. If the recently adopted case-flow management guidelines by the Supreme Court are followed systematically, the detainee population will be reduced. (See Appendix 1)

We need to make the resolution of probation violations more speedy. They should be disposed of within two weeks. When the violation is filed, all of the evidence needed should generally be available. There is, therefore, no need for extended delay to complete discovery.

3. Recommendation 3 - Find ways to discharge people who are ready to be discharged.

a) Housing

Overcrowding has corroded the ability to do decent case planning for people who will be discharged. As a result, many of the resources in the community are inaccessible.

We estimate that over 200 offenders are incarcerated only because of the failure to provide housing and other supports on the outside, or because case planning and management on behalf of good release plans for inmates has been preempted by the need to constantly move inmates from facility to facility to manage overcrowding. Two hundred offenders discharged would result in a savings of \$5.3 million. This is a ‘win-win’ situation, in that savings accrue both from releasing offenders who are ready to be released and bringing out of state inmates back to Vermont. (See Appendix 1) Almost half of the other states have some form of independent pre- release supervised housing.

One of the greatest barriers is the impact of NIMBY (Not In My Backyard) that restricts the ability to provide housing for offenders, to provide pre-release centers, and the reasonable siting of inevitable but occasional new correctional facilities. In this regard, legislative and executive leadership will be needed to allow supervised pre-release facilities to be sited.

The data tells it all. In our out of state facilities there are about 400 inmates. More than one hundred of them are past their minimum sentence. Of offenders in Vermont, 466 are past minimum. Of these, 132 of the 466 who are past their minimum have no barrier to their release, other than a lack of housing.

Overcrowding is an important problem that is driving other serious problems. However, under all circumstances of release, any offender released from prison should have ample and needed transitional support to ensure successful reintegration so that at a later date they don’t fail and thus contribute again to the overcrowding problem.

Also, the Legislature's decision in 1999, to cut housing dollars for offenders on the way out, contributed to the remarkable increase in the inmate population since that time. This year's legislature reinstated some of those funds, but more is needed to catch up. This is money well spent.

The Vermont Housing community needs to work with the Department of Corrections to secure adequate housing placements throughout Vermont. In addition, as previously noted, there are state lands and facilities available which, if not used for a detention facility, could be available, even on an interim basis, for supervised release until there is greater community acceptance.

b) Community Grants

Grants should be made to communities and organizations, where appropriate, when they establish or facilitate the establishment of halfway houses, therapeutic residential communities and supervised housing. The Department and the State must be honest with communities which accept such facilities, and keep the promises they make, regarding levels of supervision and other characteristics of the facility.

c) Housing and Employment Searches

One small but important practice would be to make available no-cost phone and stamp privileges for inmates, both in and out of state, who are seeking housing and employment for imminent release. This small investment will provide large returns. This would require adjustment to 28VSA Sec. 802a.

d) Out of State Contract Requirements

In general, rights of Vermont inmates, as established in Vermont statute and regulation, should be incorporated into out of state contracts. Included in this recommendation is the availability of equivalent programs and opportunities to secure jobs, to earn good time, and to complete the case plan to be eligible for parole or community release. Such safeguards will help ensure that inmates are released in a timely fashion.

e) Better Sentence Computations

The Commission has taken testimony to the effect that sentence computations are sometimes wrong. These errors can result in inmates being kept beyond their legal sentence. We recommend periodic audits of the sentence computation practices of the Department. This type of audit is no less important than financial audits. We urge consideration of adoption by the Department of Corrections of a sentence computation computer program that is directly accessible by inmates and the general public.

(Existing law requires the Department to successfully reintegrate offenders by the end of their terms. 28VSA section 1)

4. Recommendation 4 - Create Alternatives to Incarceration for Women

One of the issues connected to overcrowding is the rapid increase in the number of women in the system, which has shown over a 500% increase over the last ten years. This increase is completely out of proportion with the increase of male prisoners. This increase has caused dislocation and major change at certain institutions. For example, the long standing male facility at the Windsor Farm has recently been converted to an exclusively women's facility, thus creating even more pressure to place male inmates out of state. And even with that conversion, the number of women still exceeds the capacity to house them in the system.

Of even greater concern, 78% of women are incarcerated for offenses that are non-violent in nature. The majority of these women are incarcerated due to substance abuse. Therefore, of approximately 150 women in the system, about 117 women were found guilty of non-violent offenses; this problem is growing.

Since 80% of the women have children, this level of incarceration also produces untold impact on the children and costs to the human service system.

One encouraging fact is that the women themselves have identified the need for treatment programs and mentoring to reduce overcrowding. For example, 10 women are currently incarcerated for the sole reason that there is no specific housing in place for them to go after discharge. The strongest message that the women gave us was the need for more treatment programs and options for personal change, such as mentoring, even including placement in out of state programs. Also, the conditions of community supervision are so onerous that for many women, going back to jail is the easiest option. For example, in rural areas women are expected to attend substance abuse programs three times a week, but at the same time, even if they have a license, they are not allowed to drive their own cars. These same restrictions also apply to men.

Many opportunities exist for more community-based sentences for women that could significantly reduce the incarceration level for women.

In sum, the rules for supervision are so strict that the odds of successfully getting through the process intact are not good. When you add in the childcare needs, and the employment complications, incarcerated women have an almost impossible task.

We recommend that there be 150 placements for treatment purposes for non-violent women who are currently incarcerated primarily for substance-abuse reasons. They could be assigned to community placement as a condition of probation, thus resulting in many fewer women in facilities. This would allow more women to continue being with their families and children, and in the same vein, become productive members of society even while under supervision.

The Commission heard considerable testimony to the effect that the effectiveness and long range benefits of the Tapestry Program should be expanded to include non-incarcerated women, or to be an alternative to incarceration, and should be replicated for the male population. This is an example of a budgetary item, which because of the direct costs of overcrowding, does not get the attention it deserves. For example, the costs of out of state placements of men has diverted funding from expanding worthy programs such as the Tapestry Program.

We believe it would cost about the same to incarcerate as it does to treat outside of jail with the added benefit of 150 beds saved, which could be used for out of staters coming back to Vermont. This is a net dollar savings of \$2.7 million. The other benefits include reduced SRS presence in these families and better odds for success through treatment rather than incarceration.

5. Recommendation 5 - Create Lower Cost Work Camps: A Cost Effective Option Over Time

A more cost-effective way to increase beds in Vermont over time, by the equivalent of the number of offenders currently placed out of state, is to replicate the successful lower cost work camp model in St. Johnsbury in other parts of the state.

The work camp is a fundamentally different kind of facility that provides a visible means of making amends. Operation and construction costs are considerably less. In addition, based on experience, a work camp can be brought on line at about one third the time of a traditional higher security institution.

The camp works because there are specific incentives for the offender to participate in programs and comply with applicable rules and regulations. Unlike inmates at any other facility, the inmate at the work camp may earn credit off the minimum term of sentence, amounting to about a 1/2 reduction in stay. No other inmates can presently earn any credit or good time from the minimum.

The question is, are there inmates suitable for the camp in the current population? What policies or practices would have to change in order for additional population to be placed in a work camp?

The current eligibility criteria for the work camp are: conviction of a non-violent crime, with a sentence of less than one year, and behavior appropriate for the minimum security setting. There are about 245 male inmates in the existing system who, on the surface, would qualify. In addition there are 40 women who meet the screening criteria.

Examples of work include: cutting, delivering and stacking firewood for the needy; forestry management; construction and rehabilitation of low-income housing, including maintenance; services for towns; gardens for the poor; providing assistance with daily living for the elderly; providing clerical and data entry assistant to state agencies serving

the needy. This would be work that is currently not being done. Such an approach supports restorative justice.

Using work camps over the longer haul would have a positive impact on inmate population levels and long-term costs.

The St. Johnsbury work camp, appropriated in 1991, and established in 1992, is a much lower incarceration cost option than the construction of security facilities and at the same time provides direct services to localities and communities. Future camps could be constructed in a much more rudimentary and rustic fashion than the existing St. Johnsbury camp, thus adding to the cost leverage. Work crews could even provide the primary labor, and learn valuable skills in the process.

The establishment of 3 additional work camps throughout Vermont would provide lower-cost incarceration, and achieve good use of time in terms of community service. This approach would also have the impact of freeing up higher-security beds essentially sufficient to bring back an equivalent number of out of state, high-security offenders. Over time, these camps could serve to absorb foreseeable increases in the overall inmate population in Vermont.

Three 80-person camps equals 240 inmates, or nearly the equivalent of one half an avoided institution which is also equal to one half of the out of state inmate population.

One 80-bed work camp, at a construction cost of \$35,000 per bed, as opposed to the construction of a higher security bed at about \$100,000 per bed, equals \$3.5 million per work camp, or \$10 million for three camps; and the 400 beds would be on line within three years of appropriation instead of the eight years it took to bring Springfield on line. This savings could go a long way toward keeping Vermonters in Vermont.

Work Camps are envisioned as a longer-term option to accommodate future offender growth in the system which could respond relatively quickly to future growth.

6. Recommendation 6 - Restructure Probation to be Term Limited (instead of being subject to 'further order of the Court', which has come to mean 'endless')

Over the last ten years, the number of people on probation has doubled to over 9100 persons. A 25% reduction would equal 2500 fewer offenders on probation, and put Vermont in the mid-range per capita use, which is still higher than any other New England state. Further, the current level of supervision in Vermont is not even at the monitoring level, so being on probation is increasingly meaningless, and it is in name only.

Also, because of the 'zero tolerance' nature of supervision, probationers are often violated and are then candidates for institutionalization. This also adds to the

overcrowding. Zero tolerance is nothing more than an expedient mechanism to use in an environment of inadequate supervision when caseloads are unmanageable.

Vermont has the 14th highest proportional population of persons under probation and parole supervision. This means that we have 1 in 5 young Vermont males between the ages of 18 and 23 who have been under supervision at some point during the year. This is just wrong. (See data from John Pandiani, DDMHS, Appendix 2)

The Department said that “One in Five young Vermont Males who are ages 21, 22, or 23, were under DOC supervision at some point last year (2003)”. To be even more explicit, of all of the men in Vermont, one in eight who is 18 years old, nearly one in seven who is 19 or 20, one in five who is 21, 22, or 23, nearly one in five who is 24, and one in six who is 25 or 26 were under Corrections Supervision during 2003.

Corrections and the Courts are not in a position to, in effect, “raise” these young people. Corrections and the Courts are being asked to replace the role of the family in terms of setting limits and providing structure for our young people. This is a task that they cannot, and should not, be expected to perform.

Two techniques that can provide personal accountability, and at the same time provide personal incentives to change, are suspended fines and work crews. These crews could be run through the expansion of work camps spoken to above. This would require statutory adjustment to give judges that authority. However, there is the risk of increasing the number of offenders under supervision.

Each year, on the anniversary date of the imposition of the suspended sentence, the Department of Correction should be required to show cause to the sentencing court, why a probationer should remain on probation. This would apply to misdemeanors and felonies alike. In the absence of good cause, the person would be discharged. This would be an active process that could significantly reduce the number of people on probation. This would replace the existing system of waiting for Corrections to recommend removal from probation. This would also result in specific conditions of probation being articulated and reviewed on a regular basis. (see 28 VSA sec. 251)

We are recommending a variety of changes of inmate status which will increase the number of offenders requiring supervision in our communities. The Commission believes there is a need for a thorough analysis of the policies, practices, and procedures relating to offender supervision, including manpower needs, and including the possibility of caseload caps. The Commission made reference to avoided costs which would make funds available to properly fund the cost of increased supervision. (See Appendix 1)

Probation should not be used for the purpose of collecting fines or court surcharges.

7. Recommendation 7 - Consider Moving Probation Services to the Judiciary

The numbers of probationers has risen to such alarming levels that the basic and fundamental structure of the probation system within the Department needs to be

seriously examined. The purpose of probation is to implement the sentence imposed by the court to cause rehabilitation on the street while retaining accountability.

The overall practice of probation is not working well in Vermont. This is not the fault of the overworked caseworker force, but the numbers tell the story. The per capita use of probation and the length of time on probation in Vermont are among the highest and longest in the nation. The Court imposes the terms of probation, and the Department of Corrections is currently responsible for implementing the same. This system impedes the flow of timely and important information to the Court to make good decisions about probation status.

The Commission recognizes that moving the probation function to the Court systems would be a major change for Vermont. However, this is the model in use in many other states and the federal government.

In those jurisdictions where probation is under court supervision, as opposed to those places where it is not, the numbers of people on probation are more reasonable and manageable than in Vermont.

This Commission is not in a position to make a specific recommendation in this regard. We do know that of the “469 separate agencies reporting to the Bureau of Justice Statistics in 2003 ...34 of them were central state reporters, while the remaining 433 were separate State, county, or court systems.” We are of the opinion that the Court-supervised model should be explored and examined by the Administration and the Legislature.

The Commission also feels consideration should be given to modernizing our criminal sentencing along the lines of the model penal code ‘sentencing report’ of the American Law Institute. We are not endorsing that model in all respects, but believe that given the difficulties that correctional and criminal justice systems are facing across the nation, that ongoing consideration for constructive change needs to occur. This is in the context of testimony taken by the Commission to the effect that Vermont sentences are longer here than in other jurisdictions. When the Legislature considers changes to the criminal statutes and penalties for violations, there should be a fiscal-impact statement projecting the cost to the State.

8. Recommendation 8 - Removal of Non-Dangerous Offenders from Correctional Institutions

The corrections field knows how to divert large numbers of *de minimis* misdemeanor offenders to non-incarcerative settings, but we just don’t do enough of it. Police diversion has shown great promise in several communities (Winooski, St. Johnsbury, Burlington) where it has been piloted using Community Justice Centers. We recommend that these programs be systematically replicated state wide.

Alternatives such as more use of community restitution, assignment to work crews, suspended fines, use of hospitals for certain alcohol and related admittances, and other creative sentencing options can relieve overcrowding incrementally.

A reasonable target would be to divert 50 weekend admittees across the system into non-corrections settings

Another possibility is to divert persons with Motor Vehicle Offenses from incarceration by one half. These numbers have risen from 840 admittances in 1990 to 2,340 in 2001 (Department of Corrections Facts and Figures 2003)

Almost 100 beds are taken up by felony motor vehicle offenders, or for whom the motor vehicle offense is the most serious conviction. These are of two types--felony DUI offenders who have committed three or more DUI offenses; and those whose motor vehicle actions resulted in death or serious injury to someone else. The former are often community treatment failures, having been on community sanctions for prior offenses

However, these people are also a prime target population for the work camp. They are offenders whose behavior has created serious harm. While restorative approaches to these kinds of offenders have worked well, both in other jurisdictions and in Vermont, the process is highly dependent on the willingness of all parties, victims, offenders, and the courts to participate. That said, reducing the number of inmates serving Motor Vehicle sentences by half would likely generate some 40 beds. (See Appendix 1)

Currently there are over 3,000 persons placed in correctional custody annually, usually on weekends, for primarily alcohol related behavior or offense.

Using hospitals for offenders with substance abuse is another overdue option to divert persons with substance-abuse problems from incarceration in correctional institutions. Hospitals and other alternatives are much better equipped to screen and treat persons arrested for primarily alcohol-related offenses

The Commission's primary recommendation to impact this population is to eliminate mandatory minimum sentences for all offenses, including DUI. The impact of this will be that jail will continue to be available when deemed appropriate by the sentencing judge. This will reduce the number of persons jailed immediately and will also reduce the requirement of assigned counsel.

An additional impact is that in cases where there is no benefit, either to society or to the individual, jail beds are not being used simply to satisfy the statute. Vermont cannot afford purely retributive sentences. This is a positive policy change.

If we don't find ways to eliminate non-dangerous offenders from jail, the State of Vermont will have to: build more jails, send more offenders out of state, or amend the statutes to eliminate jail for these kind of offenses.

9. Recommendation 9 - Restore “Earned” Good Time

There have historically been two types of “good time” in Vermont – statutory, or automatic, good time and “earned” good time. Previous experience with statutory good time did not work well because it was not “earned” good time. Good time was eliminated on the minimum by the ‘truth in sentencing’ law. 28 VSA sec 811 (a). This was a mistake. The Commission recommends the reinstatement of “earned” good time on both the minimum and the maximum sentence. There is presently no incentive for offenders to work or participate in programs to reduce their time in jail (other than in the work camp in St. Johnsbury).

The Commission believes that if earned good time were re-implemented, there is the potential that approximately 100 beds would be freed up. This is not inconsequential, and when combined with returning an equivalent number of out of state inmates, the net savings to the General Fund would be an estimated \$2 million. The Department predicts that the reinstitution of earned good time will increase the length of sentences, thus reducing the savings. The Commission does not concur with this prediction and notes that it is contrary to the experience when good time was eliminated. At that time there was an expectation that sentences would become shorter. That expectation has not been met.

Not having “earned” good time also results in more discipline and management of offender problems inside the institution. We heard of ‘hopelessness’ by offenders. “Nothing I do makes a difference” is the attitude.

In order to ensure the opportunity of all inmates to earn good time, the Commission encourages the Department to create sufficient work, programs, and educational opportunities to earn it.

Another impact of this change would be to accelerate consideration for parole, as a result of restoring “earned” good time, thereby reducing length of incarceration.

The Commission also makes the recommendation that the provision of restoring “earned” good time be effective immediately upon passage, including for those offenders in execution of their sentences.

10. Recommendation 10 - The Major Facility Alternative: Establish a 400-Bed Detention Facility for Statewide Use in an Optimal Location

Inaction is not an available option. A fundamental choice must be made. The State can either implement the foregoing recommendations or face the immediate need to build another major institution. If the unfortunate choice to build another major institution is made, we recommend that it be a facility designed to house detainees, who have overwhelmed the system. This choice would cost an estimated \$35 million, which is roughly equivalent to virtually all of the State’s annual bonding capacity.

Nevertheless, if the choice is to build a major facility, a 400-bed detention unit would allow for the efficient housing of Vermont's detention population, allow for the return of all Vermont inmates who are currently out of state, allow for an efficient operation using, for example, video conferencing with all court locations in Vermont, virtually eliminate the bulk of the expensive costs of out of state inmate transportation, and greatly lower the costs of intra-state detentioner transportation. Most importantly, this option would allow the use of the existing regional correctional facilities to once again be used to serve sentenced prisoners who are nearing the ends of their terms or to be used for offenders serving short terms.

This would require legislative change to Title 12 to allow more out-of-county detention.

The establishment of such a facility would have to be coupled with an investment in communications technology which would allow court processes with detainees to occur effectively.

Operations cost for a pure detention facility would be approximately 25% less than for a full service institution. At average operational costs of \$36,000 in today's system, and projected costs of \$26,000 per capita operational cost for a pure detention facility, the department would spend approximately \$10 million to operate the facility, which is \$3,000,000 less than the cost of housing detainees in a secure facility.

11. Recommendation 11 - Miscellaneous Recommendations

a) Encourage transfer to federal system

A small number of Vermont inmates are also serving a concurrent federal sentence. Where possible, Vermont inmates should be transferred to the federal system to reduce the Vermont inmate population and provide the benefit of federal programs.

b) Examine appropriate role of victims

We heard testimony regarding the role of victims in the sentencing process. The Commission concludes, based on testimony we heard throughout the State, that the Vermont Criminal Justice System should not be driven by individual retribution, but should focus on the needs of society as a whole. The prosecutors' role is to represent the State and not individual victims. The victim has an important opportunity to be heard in the sentencing process. However, the victim should not control the outcome. We are mindful that the victim has other avenues of redress, including civil action against offenders and making restitution claims.

c) Establish a system of extended sentence review

The Commission also heard testimony that in certain cases, individual sentences appeared to be out of line with sentences in similar cases. A mechanism is needed to reconsider sentences after the expiration of the 90-day window limiting sentence review allowed by

current law. We conclude that a number of prisoners that have completed all of the available programming and related requirements are being held in incarceration (warehoused) for no other purpose than that they are required to complete their minimum sentence. We recommend that the Parole Board be empowered to review sentences upon application. If the Parole Board agrees that there are good and sufficient reasons for reconsideration, then the Parole Board would forward the results of the review to the sentencing judge with its recommendation. The Court would then act independently on the recommendation.

d) Support for Offenders from Other Directions

The Commission received a communication from the Department of Corrections on July 15, 2004, which outlines the Department's activities to obtain grants and enter into memoranda of understanding to develop linkages and cooperation agreements with Employment and Training, Vocational Rehabilitation and other publicly-funded sources of employment and training assistance. These workforce development initiatives are envisioned as large and important steps in removing barriers to employment for a reentering offender. This is also buttressed by the current reorganization of the Agency of Human Services which is designed to improve services to its clients.

The Department of Corrections should move promptly to implement these initiatives with the assistance of the Legislature and the Administration.

VIII. Conclusions

1. In Sum...What is Driving the Problem?

First, what is not driving the overcrowding problem: Crime rates are not driving the problem. Vermont has the 4th lowest violent crime rate in the nation. Nor is the sentencing of felons, which most people would think is at the root of the problem. Felon sentences have remained essentially steady over the last 10 years. And Vermont violent felons serve 87% of sentences imposed.

The major drivers appear to be: 1. the number of detainees which has doubled over the last 2 years; 2. the keeping of offenders who are ready for discharge in jail because of lack of housing and supports; 3. the large increase of women in the system (The number of women incarcerated in 1995 was 29. Today, the number stands at 140); 4. substance abusers, lodged in correctional facilities, particularly on weekends; 5. motor vehicle offenders sentenced to incarceration (The number has quadrupled over the last 10 years); and 6. misdemeanants sentenced to incarceration (The number has doubled over the last 10 years.)

Twenty thousand people are processed through the corrections system each year. Over the last 10 years, this has resulted in 55,000 new names associated with the Corrections Department. The system is clogged and dysfunctional.

2. Nature of the Options

There are solutions to these drivers.

Many of the preceding recommendations involve setting targets for reducing the inappropriate use of high-security, high-expense facilities. Also, some of the above recommendations are duplicative. Assembling and accumulating the best combination of targets to reduce the number of offenders in high-cost, high-security facilities from the above would then require new protocols and procedures across the criminal justice system to achieve them. It might even require new law.

One way or another, we need to bring all inmates back from out of state facilities. This would be achieved by some combination of the recommendations contained in this report.

The current out of state budget surpasses \$8,000,000. These expenditures offer no economic benefit to the people of the State of Vermont. If spent in Vermont, the economic benefit of the multiplier effect would be in the order of magnitude of \$25,000,000.

However, these recommendations do not explore some of the more root causes that should continually be attacked. Vermont has had considerable success in reducing teen pregnancies and child abuse, both of which contribute to asocial behavior over time. There is considerable potential in continuing to positively impact the lives of children and families such as early childhood development efforts. However, these are very long term efforts that we take on faith will have the desired effect over time.

In that same vein, Dr. Felton Earls of Harvard has recently written about the direct impact that healthy communities can have on crime rates and general asocial behavior. His well-written thesis makes a strong case that strong active communities result in less crime. The longer-term effect on crime and incarceration will be a function of these broader social trends.

3. Why We Have a Chance

Vermont has a history of tackling difficult issues through a series of major changes over the years. We have no doubt that the State will act again to keep things in balance. Vermont is not afraid to do the hard thing when it's the right thing. Our guidance is found in 28 VSA Sec 1, which sets forth the purpose of the Vermont Department of Corrections.

IX. Appendices

1. A Summary of Beds and Cost
2. Table of Percentage of Population under DOC Supervision

Respectfully submitted August 19, 2004.

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